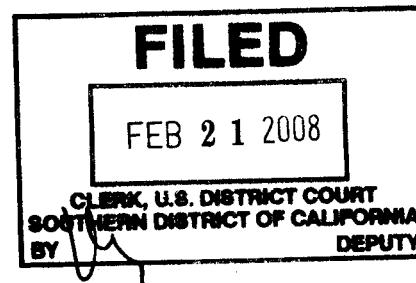


26

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11 Attorneys for Plaintiff
 12 UNITED STATES OF AMERICA



13
 14 UNITED STATES DISTRICT COURT
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,)

17 Magistrate Case No. 08MJ0356

18 Plaintiff,)

19 v.)

20 RAMON CORTES-LOPEZ,)

21 TRINIDAD PENA HUERTA)

22 Defendant.)

23 STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON

24 (Pre-Indictment Fast-Track Program)

25 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 26 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D.
 27 Moore, Assistant United States Attorney, and defendant ~~RAMON CORTES LOPEZ~~, by and through
 28 and with the advice and consent of defense counsel, Joseph M. McMullen, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 of Inducing and Encouraging Illegal Aliens and Aiding and Abetting, in violation of 8 U.S.C.
 § 1324(a)(1)(A)(iv) and (v)(II).

11 //

12 //

13 JDM:rp:2/8/08

08 CR 473-JLS

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government not later than five business days
 3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
 5 before **March 10, 2008**

6 4. The material witnesses, Paula Gallegos-Martinez and Araceli Soto-Diaz, in this case:

7 a. Are aliens with no lawful right to enter or remain in the United States;
 8 b. Were induced or encouraged by defendant to enter the United States in
 9 violation of the law on or about February 6, 2008;

10 c. Were found in a vehicle driven by defendant at the San Ysidro, California Port
 11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were an
 12 aliens with no lawful right to enter or remain in the United States;

13 d. Were paying \$1,500-\$2,000 to others to be brought into the United States
 14 illegally and/or transported illegally to their destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
 16 Security for return to their country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
 18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
 19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
 20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
 22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
 24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
 25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
 26 of (an) unavailable witness(es); and,

27 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
3 waives the right to confront and cross-examine the material witness(es) in this case.

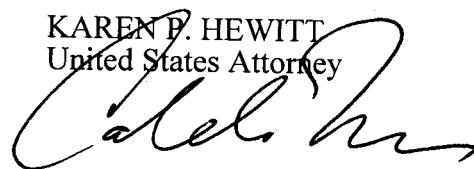
4 6. By signing this stipulation and joint motion, defendant certifies that defendant has
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
6 further that defendant has discussed the terms of this stipulation and joint motion with defense
7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
9 immediate release and remand of the above-named material witness(es) to the Department of
10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

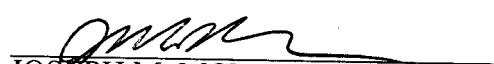
12 Respectfully submitted,

13 KAREN P. HEWITT
14 United States Attorney



15 JEFFREY D. MOORE
16 Assistant United States Attorney

17 Dated: 2/21/08.


18 JOSEPH M. McMULLEN
19 Defense Counsel for Ramon Cortes-Lopez

20 Dated: 2/21/08.


21 RAMON CORTES LOPEZ
22 Defendant 
23 TRINIDAD PENA HERRERA

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 2/21/2008

John Boul
United States Magistrate Judge